

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC CIVIL APPEAL NO.57 OF 1993
(From the decision of the District Court
of Kinondoni at Kinondoni in Civil Appeal
No.89 of 1992)

MWANAHAMISI SULTANI APPELLANT

Versus

MATHEW HAULE RESPONDENT

JUDGEMENT

MWAIKASU, J.

This is a second appeal originating from Kinondoni Primary Court, within the City of Dar es Salaam. From the year 1982 to 1985, the appellant, one Mwanahamisi Sultani cohabited with the Respondent, one Mathew Haule, as husband and wife. They lived at Mwananyamala B, within the City of Dar es Salaam. They did not, however go through the formal process of marriage, but in terms of s.160 of the Law Marriage Act, 1971, their cohabitation merited to be deemed as husband and wife. The couple was blessed with one child. It was following their misunderstanding and want of maintenance of the appellant by the Respondent that on 11/5/92 the appellant filed her petition for divorce and prayed for maintenance of the child and division of matrimonial property as her reliefs.

In the course of the proceedings before Kinondoni Primary Court apart from establishing such cohabitation as husband and wife between the parties, that they had a child of such marriage and that such marriage had broken down beyond repair, it was also established that during such period of their cohabitation the appellant had procured a building plot given to her by her grand mother around the same Mwananyamala B area. On such plot the Respondent in cooperation with the appellant built a dwelling house. They started building such house sometime in 1984 and came to be completed sometime in 1991.

On those facts the trial court, did order, among other things that such house should be sold and the proceeds divided between the parties.

That aggrieved the Respondent, who then appealed to the lower appellate court. It was the decision of the lower appellate court that it was not the house that ought to be sold, but rather, only the plot on which the house stood that ought to be valued and that such equivalent value should be what the appellant would be entitled to, thus verving the order of the trial court in that regard.

That aggrieved the appellant hence her appeal to this court, on the single ground of appeal, which is that the lower appellate court erred in law in making the order that the appellant should be compensated the value of the plot on which the house the subject of this appeal was built.

It is evident from the evidence before the trial court that when the appellant had procured the plot from her grandmother sometime in 1982, the building of the house started sometime in 1984, and both parties contributed in such construction, although when their cohabitation came to an end in 1985, the building had not yet been completed. In the circumstances it was certainly unfair to confine the entitlement of the appellant to the value of the plot only.

In my judgement, the fair course was the one taken by the trial court, that is, to order the sale of the house in question and have the proceeds divided between the parties in terms of the provisions of s.114 of the Law Marriage Act, 1971, with due consideration of the interests of the child of the marriage.

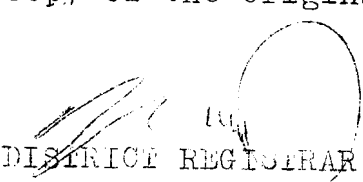
Accordingly, I allow this appeal, setting aside the decision of the lower appellate court and restoring that of the trial court, with costs.

Delivered this 6th day of December, 1994, at Dar es Salaam in the presence of Mr. Semgalawe advocate for the Appellant and the Respondent.

R.J. Mwaikasu

Judge

I certify that this is a true copy of the original.


DISTRICT REGISTRAR